

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MIKE LUCIANI

(Case No. 11539)

A hearing was held after due notice on March 2, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 4.7 feet from the twenty (20) feet rear yard setback requirement for a proposed screen porch, a variance of 4.8 feet from the ten (10) feet side yard setback requirement for a proposed two-story dwelling, and a variance of 8.8 feet from the ten (10) feet side yard setback requirement for a proposed HVAC, outside shower, and deck. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being northeast of Cleveland Avenue approximately 400 feet southeast of Lincoln Drive and being more specifically Lot 8 Block 4 within Cape Windsor Subdivision (911 Address: 38791 Cleveland Avenue Ext., Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-133.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated December 4, 2014.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Anthony Balsamo was sworn in to testify about the Application.
4. The Board found that Mr. Balsamo testified that the President of the Cape Windsor Homeowners Association has no objection to the proposed dwelling.
5. The Board found that Mr. Balsamo testified that the small lot measures fifty (50) feet by ninety (90) feet.
6. The Board found that Mr. Balsamo testified that the development was originally a manufactured home park but that, over the years, the manufactured homes have been replaced with 2 and 3 story dwellings.
7. The Board found that Mr. Balsamo testified that the Applicant is trying to get full use of the Property.
8. The Board found that Mr. Balsamo testified that the proposed 2-story dwelling will not alter the character of the neighborhood. Rather, the proposed structures will benefit the neighborhood.
9. The Board found that Mr. Balsamo testified that the proposed deck will be used as a walkway.
10. The Board found that Mr. Balsamo testified that similar houses have been built in the neighborhood and that there have been numerous variances granted in the development.
11. The Board found that Mr. Balsamo testified that the Property is unique because it is a small, narrow, waterfront lot.
12. The Board found that Mr. Balsamo testified that the variances will enable reasonable use of the Property.
13. The Board found that Mr. Balsamo testified that the difficulty was not created by the Applicant.

14. The Board found that Mr. Balsamo testified that the lot has been there for many years and is currently empty.
15. The Board found that Mr. Balsamo testified that the variances will not alter the character of the neighborhood, since there are very few mobile homes left in the development.
16. The Board found that Mr. Balsamo testified that the variances are the minimum variances to afford relief.
17. The Board found that Mr. Balsamo testified that the proposed outside shower is not enclosed and that the proposed deck will be approximately 3 to 4 feet above grade.
18. The Board found that Mr. Balsamo testified that the parking in the development is limited and the proposed plan helps alleviate that issue.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. The Board had concerns about the proximity of the dwelling and structures to the south side property line and the Board voted to leave the hearing open for the limited purpose of allowing the Applicant to submit a revised site plan which showed the proposed dwelling being moved on the Property.
21. At its meeting on April 20, 2015, the Board reviewed a revised site plan dated March 17, 2015, submitted by the Applicant. Per the new site plan, the variances requested are as follows: 1) a variance of 3.5 feet on the north side of the Property, 2) a variance of 6 feet on the south side of the Property, and 3) a variance of 4.7 feet from the rear yard setback requirement of the Property.
22. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application, as revised, met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its narrow width and small size. The lot is quite small and does not provide the Applicant with a large building envelope. Furthermore, the community has restrictive covenants which differ from the Sussex County setback requirements. The community's setback requirements are set forth on the surveys. The small lot size and the different setback requirements have created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to build a dwelling on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the size and location of the dwelling are reasonable. The Board found that the variance is necessary to enable the reasonable use of the Property as the variance will allow the proposed dwelling to be constructed on the Property. The revised site plan submitted by the Applicant confirms that the dwelling is reasonable in size, shape and location.
 - c. The exceptional practical difficulty was not created by the Applicant as the Applicant did not create the size of the lot. The community was originally developed as a mobile home park and has evolved to a community with stick-built homes. The lot is quite small and the Applicant is unable to construct the dwelling without a variance. The small building envelope and unique characteristics of the Property are clear when reviewing the survey.
 - d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

The Applicant has demonstrated that there are very few mobile homes in the community and many of the properties are developed with stick-built homes. The proposed dwelling appears consistent with the evolution of development in Cape Windsor. The Cape Windsor Homeowners Association does not object to the Application. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

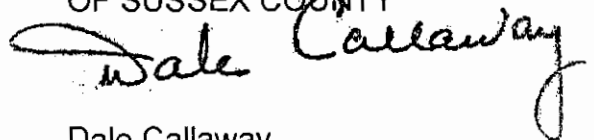
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow him to construct the proposed dwelling on the lot and that no variances for new additions are being sought. The Applicant has also documented that the location of the dwelling will afford him with off street parking, which is important.
- f. The Board's grant of the variances is based on the site plan dated March 17, 2015, and all improvements shall be constructed pursuant to that site plan.

The Board granted the variance application as revised finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application as revised was approved. The Board Members in favor were Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Mr. Jeff Hudson did not participate in the vote on this Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date June 9, 2015